Federal Environmental Assessment Review Office
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Canadian Environmental Assessment Act
Statutory and Regulatory Provisions Regulation

Summary of Comments from the 1992 Regional Workshops

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Canada

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Summary of Comments

Introduction

In January and February of 1992, FEARO held regional sessions across the country to solicit the opinion of Canadians on two regulations for the proposed Canadian Environmental Assessment Act. To focus discussions, draft regulations - an annotated Statutory and Regulatory Provisions Regulation and a Comprehensive Study List Regulation - were released prior to the Regional Sessions. Workbooks on both regulations were prepared to help interested Canadians make suggestions on the regulations. With respect to the Statutory and Regulatory Provisions Regulation, comments were solicited on:

- the criteria for including provisions on the list;
- the individual provisions contained in the regulation; and
- statutory and regulatory provisions that should be added to the list.in the city of their choice.

Attendance at the regional sessions varied from region to region. Participants numbered approximately 32 in St John's, 42 in Halifax, 32 in Fredericton, 18 in Charlottetown, 21 in Montreal, 24 in Quebec City, 23 in Ottawa, 24 in Toronto, 29 in Winnipeg, 18 in Regina, 44 in Calgary, 28 in Edmonton, 34 in Yellowknife, 49 in Vancouver and 15 in Whitehorse. Each regional session contained a mix of stakeholders including industry, environmental groups, natives, federal and provincial government department employees and members of the legal and environmental consulting professions.

Interested individuals and organizations were also encouraged to submit written comments on the substance of the regulations. More than fifty written submissions were forwarded in response to that invitation. These written submissions came from a cross section of stakeholders some of whom attended the regional sessions.

A summary of the proceedings from the Regional Sessions is presented in this report. The information generated at the sessions is cross-referenced and consolidated to summarize the search printouts from the computer data base for the Statutory and Regulatory Provisions Regulation (SRPR).

The Regional Sessions

The Regional Sessions were designed to promote intensive discussion by those knowledgeable or interested in the Canadian Environmental Assessment Act. Two announcements were sent out prior to the sessions. Interested parties were asked to pre-register and were sent workbooks and related documentation prior to the session.

At each Regional Session, participants were divided into small groups structured to reflect the represented diversity of views and values. A facilitator was assigned to each group to help organize discussion and ensure consistency of process. A list of questions, based on the workbook, served to aid the discussion, but was not meant to be restrictive.

Participants at the Regional Sessions addressed both the Comprehensive Study List Regulation and the Statutory and Regulatory Provisions Regulation. After small group discussion on each regulation, participants convened in a plenary session to report the results of their deliberations.

Detailed notes were kept on participant comments made during the regional sessions. These comments were transcribed into templates under topic-specific headings. The comments from the written submission were also organized using the same format. The templates for all regional submissions and all written submissions were entered into a computer data base. Searches were conducted for each of the topic specific headings, as well as for general comments on the regulation, comments on the criteria and suggested additions.

In reviewing this document, readers should note that participants at the Regional Sessions were asked to highlight potential problem areas with the regulations and to note differences of opinion. However, it is noteworthy that while participants did underscore areas of concern with the regulations, the spirit of discussion was one of constructive suggestions.

Finally, while this report is an important indicator of attitudes and opinions among potential users of the Canadian Environmental Assessment Act, these opinions are not necessarily limited to the legislation or areas of federal jurisdiction. Moreover, lack of comments on a specific provision does not necessarily mean there was agreement with the provision.

General Comments On The Statutory and Regulatory Provisions Regulation

Many general comments were made about the Statutory and Regulatory Provisions Regulation (SRPR) in both the regional sessions and written submissions. Some

comments indicated that the regulation was satisfactory as drafted. However, many participants in the regional sessions expressed the view that they had a poor understanding of the SRPR and were unable to adequately provide input. Some questioned the need for the Regulation when the Act specified the responsibility of assessments. Others found the provisions to be confusing and noted that the full Act or Regulation must be read in order to determine the context in which each provision was to be applied. There was also concern that important provisions might be missed without a thorough expert analysis of appropriate federal statutes and regulations.

Some discussion in the regional sessions focused on the wording of the provisions themselves. It was noted that many provisions contained the imperative word "shall" rather than the discretionary word "may". This caused confusion for some participants who suggested changing the wording of the provisions themselves and expressed concern that the provisions containing the word "may" would lead to fewer assessments.

The overall approach to the development of the SRPR was specifically noted by many participants in several of the regional sessions. They suggested that the focus of the regulation be changed from an inclusion list to an exclusion list. However, other participants stated that using an inclusionary approach would create an administrative nightmare and could cause un-necessary delay in proclaiming the Act.

One of the most widely debated issues regarding the SRPR was how the provisions listed in the regulation interpret Paragraph 5(1)(d) of the Act. Many participants raised questions regarding how provisions that do not involve formal permitting powers will "trigger" the Act. Some industry representatives recommended that the regulation only include those provisions which provided an "affirmative regulatory duty". They suggested that those provisions that gave discretionary ad hoc powers should be deleted. Other participants suggested that the wording of the Act is broad and that this regulation should reflect the intent of the Act and not be limited to permit or license issuing provisions. The relevance of all these comments must be considered in light of the actual wording of Paragraph 5(1)(d).

Industry representatives also voiced strong concerns that many of the provisions on the law list come into play after irrevocable decisions are made. They suggested projects would be caught at a late stage in the planning process rather than "early in the planning stages". On the other hand, other participants argued that "early in the planning stages" is not in keeping with the spirit of the Act as the definition of project covers all "time frames".

It was suggested that very minor parts of some projects will trigger an assessment under some of the provisions on the SRPR. Suggestions were made to establish "thresholds"

for the provisions to avoid assessment on trivial projects. While it was emphasized by some participants that cascading permits should not lead to multiple reviews, others stated that removal of the provisions for such permits must not remove the ability to perform a legitimate staged or phased review when appropriate.

Industry representatives also stressed that harmonization agreements should be established with the provinces and/or equivalency provision should be added to the Bill or to the criteria to avoid duplication of federal and provincial processes.

There also was concern about how provisions were put on the SRPR. Some participants were concerned that some departments may hide provisions for projects or activities they did not want to assess. It was noted that some departments may have carefully examined their Acts for relevant provisions while others have not been so thorough. Some participants also raised questions or concerns about how the regulation will be updated when new laws are promulgated.

A specific issue raised in the north was the administrative overload that would occur with the screening requirements under the SRPR. The regulation captures many minor processes and comes at a time of reduced spending. The devolution of administrative responsibility in the NWT means that this work will fall to the NWT Government.

General Comments on the Criteria

Some individuals agreed with the criteria as written. Others expressed the concern that the criteria were too limited, subjective and unclear. Many participants stressed that clarity is needed in order to guide departments and private sector proponents so projects are not caught at the last minute. Furthermore, it was not clear to many participants if the criteria was the basis of the regulation or if it was developed after the fact.

A recommendation was made to include the criteria in the regulation, but others stated that the criteria could not legally be part of the SRPR.

The need for criteria to define the Regulation was questioned. It was recommended that the only criteria to be used should be that provided in the enabling subsections of the Act pursuant to which a federal authority issues a permit or licence, grants an approval or takes any other action for the purposes of enabling the project to be carried out.

Specific Comments on Each Criteria

Criterion 1 - Opinion was divided on the appropriateness of criterion 1. Some found it acceptable as written while others made the following suggestions for changes to the wording:

- They are statutory or regulatory provisions wherein an authority has the power to issue a permit or licence, grant an approval or exercise any other power that would permit a project or any part thereof to proceed;
- They are statutory or regulatory provisions wherein an authority has the authority to issue a permit or licence grant an approval or exercise any other power that would permit a project or any part thereof to proceed;
- They are statutory or regulatory provisions wherein an authority issues a permit or licence;
- They are statutory or regulatory provisions wherein an authority issues a permit or licence, grants an approval or exercises any other power that would allow a project or any part thereof to proceed;
- They are statutory or regulatory provisions wherein an authority issues a permit or licence grants an approval that would permit a project or any part thereof to proceed.

Criterion 2 - Opinion was also divided on criterion 2. However, no changes were suggested for the wording and the criterion elicited little comment.

Criterion 3 - Criterion 3 caused some confusion and clarification of this criterion was requested. Some thought the criterion was essential so that projects are not subject to late assessments, while others thought the criterion should not just apply to the early stage permits or licences. There was concern over the definition of "early in the planning stage" and who and how it would define. It was also pointed out that some of the provisions do not follow this criterion in that they provide for licences and /or permits late in the stages of a project.

Criterion 3 was also judged as being not in conformity with the Act and thus, irrelevant. The Act provides specifically for early assessment but this does not exclude federal impact assessment at a later stage. It was suggested that the courts have held that federal environmental assessment is not irrelevant or impracticable even at a later date

when the proponent has failed to obtain approval at an early planning stage and the federal government has failed to carry out an assessment.

There was also an incompatibility noted between Criterion 3 and the definition of project in the Bill where assessment does not just apply to new construction.

It was also noted that Criterion 3 is inconsistent with paragraph 5(1)(d) of the Act and has the effect of altering the letter of the law through administrative requirements.

Criterion 4 - A question was raised as to what criteria will be used to assess environmentally benign projects and who will undertake such an assessment.

The French version of criterion 4 was questioned in that it referred to projects with "significant" rather than " not negligible effects". Environmental assessment is to be excluded in the Act for projects which are on an exclusion list or have minimal federal involvement. However, Paragraph 5(1)(d) and Subsection 55(f) make no reference to the magnitude of the environmental effects expected from a project as a criterion for including or excluding federal powers exercised in respect of that project from this regulation. Under the Act, the significance of environmental effects is not generally a criterion for the application or non-application of assessment but rather determines the steps that must be taken under Sections 16,20, and 34. For these reasons, the most that may be justified in the french version of criterion 4 are words whereby it catches provisions applicable to projects whose environmental effects are not insignificant or not negligible.

Finally, it was also noted that Criterion 4 is inconsistent with Paragraph 5(1)(d) of the Act and has the effect of altering the letter of the law through administrative fine tuning.

Criterion 5 - Little was said about the obsolete nature of Criterion 5. It was noted that the criterion was not clear as written and that it was not consistent with Paragraph 5(1)(d) of the Act and this had the effect of altering the letter of the law.

There was concern about the wording of this criterion, and it was suggested that the wording be changed to "the prime purpose of the provision is to provide authority to deal with environmental effects" or "the provision provides significant/substantial authority to deal with the environmental effects".

Criterion 6 - Little was said about the obsolete nature of criterion 6. This criterion was identified as not being totally clear as written. It was also criticised for being inconsistent with paragraph 5(1)(d) and in effect of altering the letter of the law through administrative fine tuning.

Criteria 7 to 10 will be used to identify provisions that should not be in the regulations.

Criterion 7 - One individual stated that policy assessment as covered in criterion 7 should be a criterion. Another comment stated that criterion 7 is unclear because certain powers to make regulations, especially site-specific regulations may come within paragraph 5(1)(d) and Subsection 55(f).

Criterion 8 - It was noted that trade permits should not be included in #8 as they may indeed have significant environmental implications (e.g., export licensing for armaments and nuclear reactors). Criterion 8 was also identified as needing a mechanism to ensure that proponents do not go through multiple assessments.

Criterion 9 - It was noted that the wording in criterion 9 is unclear and should be re-examined. The question arose as to if this criterion included equivalency.

Criterion 10 - This criterion was identified as needing clarification.

Comments on Provisions Organized by Subject Matter

Agriculture - There was general concern referred across the country about agricultural projects and legislation that is under the jurisdiction of Agriculture Canada. It was strongly suggested that agricultural projects must somehow be captured under the SRPR. It was pointed out that agricultural practises are not necessarily environmentally benign and while there is legislation to cover specific agriculture practises that legislation may not cover environmental concerns. Of particular concern was the need to regulate biotechnology and the release of genetically engineered material.

The specific provisions for agriculture attracted few comments. However, provisions which contained the word "shall" were noted as being problematic. Some individuals recommended that all provisions listed be deleted. It also was recommended that the listed provisions be reviewed after the Bill is revised to ensure environmental protection provisions are in place.

Section 123 of the Animal Disease and Protection Regulations under the Health of Animals Act received a number of comments and recommendations that the potential impacts from disease spread from game farm animals to wild animals should be subject to environmental assessment.

A recommendation also was made to add relevant sections of the Seeds Act to the SRPR as Agriculture Canada currently conducts assessments of transgenic crop field tests

pursuant to the Seeds Act and the EARP. It was suggested that the provisions from the Fertilizer Act should also be included in the regulation.

Communications - There were no general comments made about the inclusion of provisions covering communications in the SRPR.

Opinions on the specific provisions in this section varied. Some individuals saw the necessity for retaining the provisions in the SRPR. In particular, it was noted that Subsection 22(b) of the Telegraphs Act should be retained since there was concern about preservative contamination from the poles. However, concern was noted regarding the scale of projects caught under these provisions and, therefore, it was suggested such assessments should be restricted to large projects. Smaller projects would be caught by the provincial process which should not be duplicated by the federal process.

Some provisions were recommended for deletion. One individual's recommendations for deletion were conditional on the new Telecommunications Act providing for environmental protection. No additions were suggested within this subject area.

Conservation/Public Lands - All the specific provisions in this subject area received comments supporting their retention in the SRPR. It was noted that the inclusion of Section 4 of the Wildlife Area Regulations under the Canada Wildlife Act and Section 36 of the Migratory Birds Regulations under the Migratory Birds Convention Act did not follow Criterion 3. The provisions from the Public Lands Grant Act were also considered by one to be too encompassing and, therefore, the provisions should be removed or have qualifications attached to them. Since the provisions under this Act were caught under the federal lands trigger, it was recommended that they be deleted.

It was suggested that section 6 of the Migratory Birds Regulation under the Migratory Birds Convention Act be added to the SRPR. In addition, certain regulation-making powers under the Migratory Birds Convention Act (e.g., the need for a closed season, area and species, and applicability to aboriginal persons) should be considered for inclusion.

Environmental Protection - Comments on each provision listed under environmental protection included recommendations to retain. However, comments were received to delete all provisions except Subsection 71.1 of Canadian Environmental Protection Act (CEPA), section 11 of the Federal Mobile PCB Treatment and Destruction Regulations under the CEPA, Subsection 13(3) of the Ozone-Depleting Substances Regulation #1 chlorofluorocarbons under CEPA and Subsection 7(3) of the Ozone-Depleting Substances Regulations #2 certain bromofluorocarbons under CEPA. In particular,

there were recommendations to delete Subsection 61(1) dealing with project specific regulations under the Canadian Environmental Protection Act since it deals with federal regulation making power which may not necessarily fall within the criteria for inclusion in the SRPR.

It was noted that Subsections 10(1) and 13(1) of the Arctic Waters Pollution Act, Subsection 61(1) of the Canadian Environmental Protection Act, and section 11 and Subsection 12(1) of the Federal Mobile PCB Treatment and Destruction Regulations under the Canadian Environmental Protection Act were seen as unclear and ambiguous as to whether the assessment applied to the project or the regulation. Furthermore, it was suggested there was no reason to subject an authority to the assessment requirement under these provisions when the authority already has a mandate to protect the environment.

No additions were recommended under this subject area.

Energy/Nuclear - It was noted that the proposed general amendments to the Atomic Energy Control Regulations and subsequent amendments will render the provisions on the obsolete. This would eliminate concern about multiple assessments of projects within this subject area with the exception of uranium mining facilities. There was also general concern noted regarding potential overlap between the provisions which could result in the requirement of many assessments in the lifecycle of a project. As well, some provisions were identified as needing thresholds to avoid trivial assessments.

All provisions listed received comments for retaining and deleting. It was stated that Subsection 9(1) of the Atomic Energy Control Regulations under the Atomic Energy Control Act must not be deleted as it fits the definition of project in the Act. Furthermore, it was suggested that many years could elapse between the granting of a permit for construction and the granting of an operating permit (with all possible concomitant changes in circumstances) thus checks and balances are prudent.

There were concerns about the approvals or licences issued by the Atomic Energy Control Board under paragraph 7(1)(d) and section 9 of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act being included in the SRPR. These approvals are for decommissioning and abandonment of mining facilities respectively. It was suggested that these are not appropriate stages for assessments since decommissioning is assessed at the time of initial project approval and the decommissioning approval is only an instrument for insuring existing standards are met. Since abandonment follows decommissioning, the approval issue under section 9 only states that the decommissioning requirements have been met. In both cases the requirement for an assessment is unreasonable.

No additions were suggested for this subject area.

Energy/Oil and Gas - As a general comment it was noted that the National Energy Board should be the single window agency for assessment of projects in this subject area.

All provisions in the Energy/Oil and Gas received comments suggesting that they should be retained on the SRPR with the exceptions of Subsection 164(1) of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act and section 6 of the Liquified Petroleum Gases Bulk Storage Regulations under the Railway Safety Act. Deletion was recommended for Subsection 155(1) of the Canada-Newfoundland Atlantic Accord, section 158, Subsection 160(1) and Subsection 164(1) of the Canada - Nova Scotia Offshore Petroleum Resource - Accord Implementation Act, Subsections 117(1) and 125(1) of the National Energy Act and section 6 of the Liquified Petroleum Gases Bulk Storage Regulations under the Railway Safety Act. The need for thresholds was identified for some provisions to limit assessments to larger projects.

It was noted that Subsections 153(1),155(1) and 159(1) of the Canada-Newfoundland Atlantic Accord Implementation Act (CNAAIA) do not contemplate a project that requires approval. Subsection 153(1) refers to the conservation of hydrocarbon resources and would be invoked should an operator exhibit waste as defined in Subsection 154(2) of the CNAAIA. The definition of waste is not one that assumes an environmental character. Moreover, it was suggested that the provisions of this Subsection would apply only to a production project that has already undergone a public review under section 44(1).

It was also stated that Subsection 117(1) of the National Energy Board Act was unclear as it implies that the National Energy Board would curtail a licence based on its impact in the USA. It was suggested jurisdiction is not clear, and these provisions could have profound implications. In particular, this Subsection stimulated discussion in the northern sessions where one individual recommended deletion. It was argued that the

licence to export does not allow a project to proceed while production transport or delivery are caught under other provisions on the SRPR. An export licence may be sought early in the process and before the project is defined. It was pointed out that partial assessment of a project is both inefficient and not effective environmental management. In the case of an export licence the whole project should be looked at.

Section 6 of the Liquified Petroleum Gases Bulk Storage Regulations under the Railway Safety act was identified as not following criterion 3. Another individual pointed out that it needs a trigger. Questions were raised if this applies to an advanced exploration site which installs a diesel or naphtha tank to meet winter needs.

A suggestion was made in regard to paragraph 5(1)(b) of the Oil and Gas Production and Conservation Act that enforcement activity should be included in the SRPR.

Energy/Electricity - All the provisions in this subject area were recommended for retention on the SRPR. However, recommendations were put forth to delete all the provisions except for Subsections 58.16(1), 58.32(1) and 58.34(1) of the National Energy Board Act. Thresholds were suggested for several provisions so assessments would only be conducted for big projects.

A question arose if Hydro Quebec projects would be assessed under Subsection 7(1) of the Dominion Water Power Act, or would it be used to review/assess licences to sell power. It was stated that an assessment requirement under this provision would delay and impede exploration work.

A similar argument was made for deleting Subsection 8(1) of the Dominion Water Power Regulations under the Water Power Act as the added cost and time delays could discourage small scale hydro development.

Subsection 69(3) of the Dominion Water Power Regulations under the Dominion Water Power Act was highlighted to be retained if due consideration was given to cumulative effects. Furthermore, it was suggested that Subsection 58.11(1) of the National Energy Board Act should not be deleted because there is no requirement under paragraph 5(1)(d) and Subsection 55(f) whereby the federal powers to be listed must be discretionary. Participants indicated Subsection 58.11(1) is not as automatic as it first might appear and must be read with Subsection 58.14(1). The NEB may consider options other than the granting of a permit.

It was recommended that Subsection 58.16(1) of the National Energy Board Act should trigger assessment only for new power lines under this provision. Subsection 119.03(1) of the National Energy Board Act was recommended for deletion because potential

environmental effects seem too remote to properly analyze. It was also seen to raise questions of the national energy strategy including exportation considerations. Another comment favoured deletion because environmental impact of exportation is insufficient to justify inclusion. Moreover, the environmental impact of production will probably be subject to assessment by reasons of other statutory and regulatory provisions.

Some individuals recommended that Subsection 119.03(1) of the National Energy Board Act should not be deleted because there is no requirement under paragraph 5(1)(d) and Subsection 55(f) whereby the federal powers to be listed must be discretionary. The NEB may decide that licensing rather than permitting process to be followed.

Suggestions were received that projects under Subsection 119.08(1) of the National Energy Board Act should be subject to class screenings. On the other hand, other participants did not like the limitations demonstrated by a previous test of this and asked if there was a need for something better. Questions were also raised regarding a national energy strategy including export considerations. It was also argued that the Subsection should be dropped because the environmental impact of exportation per se is insufficient to justify inclusion. Assessment will likely be triggered under other provisions.

One argument for retaining Subsection 119.08(1) was made on the basis that the Supreme Court of Canada has not yet rendered a decision on the Application for leave to appeal in the Grand Council of the Crees (of Quebec) and the Cree Regional Authority v. the Attorney General of Quebec, Hydro-Quebec et al. It is clear since the Oldman River case that assessment under Bill C-13 need not find its source in the legislation of the NEB.

One person suggested that coal-fired energy plants should be included in the energy section.

Forestry - In general, it was noted that the federal government does not have an adequate role in the environmental review of forestry projects and practises. Further investigation and evaluation of this is warranted given the high level of interest and concern on the part of the Canadian public about forest resource issues. There was general agreement that the section on Forestry should be retained on the SRPR. However, some noted that the sections were inadequate.

A recommendation was made to strike Subsection 3(1) of the Forestry Timber Regulations under the Forestry Development and Research Act.

Suggested additions to the SRPR were Atlantic Canada Opportunities Agency (ACOA) funded projects, federal/provincial subsidy agreements, and federal/provincial forestry agreements. It was noted that the Forestry Development and Research Act is limited to the cutting and removal of trees. Other forestry practises such as spraying and replanting need to be included.

Miscellaneous - Several individuals were concerned that the inclusion of Subsection 7(a) of the Explosives Act on the SRPR. In general, the view was that the assessment under this provision should only apply to large factories or hazardous explosives. There were also questions raised about whether the assessment would apply to the explosive or the mine itself in situations where the factory might be a small part of the mining operation. Recommendations were made to both remove and retain this provision.

Opinion was similarly divided on section 33 of the Explosives Act. It was noted that the manufacture of explosives needs to be defined given that numerous mines have small slurry plants that are of no great environmental risk. Furthermore, the assessment could be triggered under Subsection 7(a) of the Act. It was recommended that a review be undertaken to determine if there are projects where this is the only trigger and if an assessment should be required.

Other comments suggested paragraph 9(1)(b)(iii)(A) of the Immigration Regulations under the Immigration Act should be retained on the SRPR. Assessment could be required where a potential investor proposes investment in a provincial transportation sector, especially if attempting to establish partnership with the province. A recommendation to delete this provision argued that such projects would be picked up by other federal or provincial regulations. In general there, was some confusion as to why this provision should be on the SRPR and what such an assessment would mean.

Comments made on Subsection 5(1) of the National Archives of Canada questioned the need for assessment for such projects while others stated that it should be retained if covered in Bill C-13.

Recommendations were made to delete paragraph 5(1)(c)(vii) of the National Research Council Act from the SRPR. It was also recommended that paragraph 5(1)(k) of the National Research Council Act be deleted. It was noted that this provision broadens the scope of the Act because it extends outside the government sector. There was some question as to what types of projects this would cover and if it would require screening of technologies.

Natives - A question arose in general about how CEAA would apply to natives not covered under the Indian Act such as the Innu. It was also noted that many of the provisions could be deleted as such projects would be caught under other triggers in the Bill. In general, it was suggested the SRPR should reflect current policy and the evolving relationship between aboriginal peoples and the federal government and more flexible approach to assessment may be preferable. It was also suggested that the Indian Act was fundamentally flawed and should not be the basis for provisions on the SRPR.

The individual provisions in this subject area received few comments. Opinion was divided on retaining or deleting all the provisions with the exception of section 93 of the Indian Act, and section 5 of the Indian Reserve Waste Disposal Regulations and Subsection 5(1) of the Indian Timber Regulations under the Indian Act. These provisions each received comments to retain, noting that evolving land claims and aboriginal rights may eventually impinge on this and other provisions in this subject area.

It was also recommended that Subsections 18(2) and 19(c) of the Indian Act have thresholds applied whereby small projects would not be subject to assessment.

The usefulness of including section 2 of the British Columbia Indian Reserves Minerals Act on the SRPR was questioned. Some suggested it should be retained, while others stated that its inclusion was ridiculous noting that until a proponent has entry they don't know the project opportunities.

The Indian Oil and Gas Act is currently under revision. Therefore, participants in one session suggested that Subsection 5(2) of the Oil and Gas Regulations under this Act should be deleted from the SRPR. It was also noted that the provision is too broad to make a decision regarding an assessment.

Additions that were suggested for this subject area were not specific provisions. Rather, it was suggested that the SRPR should provide for assessments regarding aboriginal land claims such as the James Bay Agreement by reference to the regime of Category 2 lands (lands for which the aboriginal groups have special exclusive hunting, trapping and fishing rights). The SRPR should also contain provisions that would provide for assessment on projects on public lands covered by a lands claim agreement or aboriginal treaties.

Parks - Each provision in the subject area of parks received comments to retain on the SRPR. It was also stated that all the provisions should be deleted since projects in the Parks would be caught under the federal lands trigger of the Act. Minimal thresholds to exclude assessments for small or trivial projects were recommended for Subsection 28(2) of the National Historic Parks General Regulations, Subsection 5(1) of the National

Parks Regulations (Building) under the National Parks Act. It was noted, that while the latter provision should be retained, its application must be reasonable. Subsection 5(2) of the National Parks Regulations (Fire Protection) requires a permit for possession of more than 250 litres of fuel within a park. One suggestion was for assessment to be triggered for possession of fuel over 1000 litres while others thought that the provision as it stands would trigger an assessment for boats in marine parks.

Participants at one regional session considered Subsection 8.3(3) of the National Parks Act but were concerned that assessment would be restricted to commercial ski areas. Assessment should apply to all commercial development. This was considered an example of the disadvantages of the exclusive approach in the SRPR.

Subsection 5(2) of the National Parks Regulations (Garbage) was recommended for retention on the SRPR but appropriate procedures should be the normal course of action.

No provisions were recommended for addition to the SRPR in this subject area.

Territories - All provisions received recommendations to retain on the SRPR. As well, comments were received to delete all provisions except section 5 of the Northwest Territories Archaeological Sites Regulations under the Northwest Territories Act and the following regulatory provisions under the Territorial Lands Act; section 3 and Subsection 15(1) of the Territorial Dredging Regulations, paragraph 25(1)(a) and Subsection 27(a) of the Territorial Land Use Regulations, Section 5 and Subsection 12(2) of the Territorial Quarrying Regulations, Subsection 10(1) of the Yukon Forest Protection Regulations, Sections 4 and 7 of the Yukon Timber Regulations. Likewise, Section 5 of the Yukon Archaeological Sites Regulations under the Yukon Act, Subsections 77(1) 78(2) and Section 122 of the Yukon Quartz Mining Act were not specifically mentioned for deletion.

There was considerable discussion about Section 8 of the Territorial Lands Act in the Yellowknife session where it was pointed out that the inclusion of this provision on the SRPR could give rise to severe administrative problems. For example, under the EARP Guidelines Order the assessment process applies to a person who wants a land lease for building a house. At present, the Department of Indian and Northern Affairs does the screening and the slow turn-around time often holds up the approval process and development. This is a problem given the short construction season in the NWT. For these reasons it was considered that the provision should be deleted or narrowed in application under the Act. A contrary opinion was expressed that the provision should be retained since the Cabinet might use this as a loophole to dispose of Territorial land (e.g., for a deep water port or to set aside lands for the Thelon Game Sanctuary). The

exclusion list should be used to define trivial projects rather than taking the provision off the SRPR. It was also noted that land withdrawals could have environmental impacts and should be captured under the Act rather than policy and programs provisions for assessment. In response to this argument, participants in favour of deleting the provision stated that the environmental impacts of such dispositions would be captured under other provisions on the SRPR arguing that trivial projects would be difficult to itemize and define for an exclusion list. Furthermore, the disposition of land in itself should not be a trigger and screening is irrelevant unless there is a project.

A substantial discussion also took place in Yellowknife regarding the application of the Act to staking claims and the right to explore. It was recommended that all provisions under the Canada Mining Regulations and the Territorial Coal Regulations under the Territorial Lands Act did not disturb the land but dealt with the subsurface and should be deleted. Before anyone can take action that would have an impact, they must obtain a Class A Permit, and it is at this stage that environmental assessment should be triggered. For example, there are thousands of claims staked each year many of which will never support further work. The only activity this involves is walking the perimeter and staking it. In other words, recording a claim does not make a project nor does recording a claim necessarily lead to a project. More intrusive work such as digging a trench would require a land-use permit and this would trigger an assessment. It was argued that to include the provision would be to cause assessment to occur before a project could be defined and without enough information to assess the function. However, another opinion was expressed that the provisions must be retained on the SRPR so such activities will not be missed. One commentator thought the staking of claims should be assessed once possible development is considered or to prevent claim registration in critical environments. A suggestion was made to allow conditions to be placed on any potential developments at the time of claim registration.

It should be noted that a similar question arose in the Whitehorse session about whether or not the grant of a located claim pursuant to Subsection 40(1) of the Yukon Placer Mining Act would be a project.

It was recommended that Section 14 and Section 35 of the Territorial Coal Regulations under the Territorial Lands Act must have an evaluation early in the process rather than after operation begins. Furthermore, the former provision should not trigger an assessment unless it is in a sensitive area such as a National Park. The latter provision could be deleted because it is a duplication of paragraph 25(1)(a) Territorial Lands Act and Subsection 27(a) Territorial Land Use Regulations under that Act.

It also was suggested that authorities consider adding environmental protection conditions to the permit. For many of the provisions that authorize the issuing of

permits. As well, comments indicated Section 7 of the Yukon Timber Regulations under the Territorial Lands Act needed a better definition of "certain classes of people" and "certain uses".

Participants at the Whitehorse session noted that the Yukon Placer Mining Act is being revised and provisions on the SRPR should be revisited in light of the amendments.

A question was posed in regard to Subsection 77(1) of the Yukon Quartz Mining Act. As long as leasing and subsequent activity is adequately controlled for environmental management purposes is it O.K. to ignore this? It was suggested this should not become a convenient loophole when others have been closed off.

No provisions were identified for addition to the SRPR within this subject area.

Transportation

All transportation provisions listed for the SRPR received comments calling for their retention with the exception of the Subsection 44(1) and Section 145 of the National Transportation Act, Subsection 8(1) of the Railway Safety Act and Section 71.6(a) of the Regulations for the Transportation of Dangerous Commodities by Rail under the Railway Safety Act. Some form of environmental control was seen as necessary for Subsection 383(1) of the Railway Act if it involved the use of herbicides. Deletion was not mentioned for the following provisions: Subsection 243(1) of the National Transportation Act, Section 7 Subsection 8(1) of the Railway Relocation and Crossing Act and Subsections 112(3), 123(1), 127(1), 145(1), 147(1), 196(6) and Section 131 of the Railway Act.

The establishment of thresholds for most provisions was recommended so smaller projects would be excluded from assessment. Furthermore, it was suggested that provisions which referred to commodity pipelines should have the commodities defined.

All provisions that referred to railway crossings were recommended for deletion because railway crossings have little environmental impact and are already regulated for safety. Subsection 230(1) was recommended for further discussion to determine/define what "public comfort" means. If the provision includes sewage and waste disposal, then it should not be deleted from the SRPR.

Apparently the Section 71.6(a) of the Regulations for the Transport of Dangerous Commodities by Rail under the Railway Safety Act may be repealed. FEARO will need to revisit this provision should this occur.

It was suggested that provisions dealing with air transport be added to the SRPR in this subject area. Participants were of the view that the addition of the Aeronautical Act is justified because it gives federal authority for airport use.

Water/Fish - The provisions included in this subject area gave rise to considerable discussion. Many Canadians were unclear as to the division of active responsibilities for review under the Navigable Waters Act and the Fisheries Act. Thus it was suggested both Acts should be examined very closely to ensure they are not impediments to the CEAA. Overall, there was considerable debate and concern about what the Oldman decision meant to CEAA.

Several comments called for retaining Fisheries Act provisions on the SRPR. One opinion was that the Oldman decision did not challenge the legitimacy of including these provisions. In interpreting the specific phrase "decision making" in the EARP Guidelines Order, the Court found that it required an initiating department to have an affirmatory regulatory duty. However, the Court was not in any way commenting on the constitutional authority of the federal government to enact environmental assessment legislation. Thus it was recommended that the Fisheries Act provides legislative authority which evokes a duty to comply with CEAA and as a result must be on the SRPR.

A contrary view was expressed that the Fisheries Act provisions should be dropped or their inclusion be qualified to make clear that an automatic assessment is only automatic when the Minister proposes to act pursuant to them. it was argued there is no affirmative duty in the provisions and Bill C-13 requires a positive step or decision before assessment is triggered. Under Section 5(1)(d) of the Act, the Minister must at least take some action if not go so far as to issue a permit or grant an approval. Under the EARP Guidelines Order only a decision making responsibility is necessary, inter alia. The threshold for assessment is therefore considered higher in the Act than in the Guidelines Order and the Section 5(1)(d) duty is greater than having to make a decision. Another comment noted that a result of retaining the Fisheries provisions on the SRPR would be to allow for a federal authority to reach a decision contrary to a provincial government or to invoke new terms and conditions of an approval.

Recommendations on Subsection 35(2) of the Fisheries Act were for both deletion and retention. There were also questions as to when the provision came into play and whether or not it applied to the whole ecosystem or just the fish. Participants in one regional session called for careful consideration in deciding what to do with this provision.

Participants who argued for the deletion of this provision felt that if it were retained at least some projects should be excluded, or assessments should only be done for projects of a certain size. It was further noted that Section 37(2) aims at dealing with environmental impacts. Questions were raised if it makes sense to assess a decision related to cleaning up the environment. However, others suggested the provision be retained on the SRPR and also noted that habitat referral letters should be included under the provision.

Subsection 37(2) of the Fisheries Act also received recommendations for retention, deletion, the establishment of threshold levels for triggering an assessment, and further careful study. It was noted that the power used in this provision is to restrict rather than to allow a project to proceed as per Section 5(1)(d). This provision was also seen as problematic as it does not technically confer a power, duty or function which comes within the designation of projects to be assessed under Section 5(1)(d).

Of the few comments made on Subsection 10(1) of the International River Improvements Regulations under the International River Improvement Act and Subsection 10(2) of the Navigable Waters Act, all recommended retaining these provisions on the SRPR.

Paragraph 5(1)a of the Navigable Waters Protection Act received numerous recommendations that it be retained on the SRPR. Others thought that size triggers should be included if it was left in the regulation. Questions were raised regarding bridge construction pursuant to this provision. Some comments noted that the intent of the Navigable Waters Act was no longer valid and therefore the provisions should be deleted or exclusions made for all but large projects on established river transportation routes. Projects affecting small creeks or intermittent streams should be excluded from assessment. It was also pointed out that this provision is not consistent with Criterion 3. In general, there was some concern about the definition of navigable waters and inconsistencies in the application of the provision.

Section 25 of the Navigable Waters Protection Act also received comments recommending deletion, retention, and the establishment of some threshold limits in the provisions under which certain projects would not be assessed. One reason given for retaining the provision was that it was not clear that a decision by the Minister of Transport to designate places where dumping could occur in navigable waters would always involve a federal proponent. Once the place is designated, the dumping could be by non-federal parties.

In the northern sessions, there was considerable debate about the Northern Inland Waters Act. Some comments suggested including Subsection 11(1) of the Act as

covering projects under Section 70 of the Yukon Placer Mining Act which is included in the SRPR. It was also noted that assessment under Subsection 11(1) was a duplication of the land-use permitting process for projects that require both water licences and land use permits.

Those who wanted to delete Subsection 14(a) and Subsection 14(b) of the Act argued that assessment should not apply for renewal of water licences where there has been no change in the project. It was argued that a renewal may involve changes in terms and conditions but no substantive changes. However, other participants noted that the it may be appropriate to apply more stringent terms and conditions at renewal time. Furthermore, some participants suggested renewal may be a chance to review the terms and monitoring, and thus should not be left to the regulatory agency to decide. Exclusion of some projects could be through placing such items on an exclusion list under CEAA.

Commentators where divided in recommending that provisions from the Northern Waters Protection Act be retained or deleted. Participants in one session pointed out that any provision from the Act should be revisited in light of the proposed Yukon Waters Act.
Recommended additions to the SRPR within this subject area were Subsection 36(4) and Section 45 of the Fisheries Act and Section 16 of the Atlantic Fisheries Regulation. The Boundary Waters Treaty Act should be included as well.

Additions to the Regulation

Suggested additions to the SRPR were directed more at general subject areas rather than specific provisions. Some comments noted an absence of provisions relating to mining and mineral processes and suggested that these be added. Other subject areas to be considered were waste management, water quality, the environment, wind and water caused soil erosion, loss of organic matter in soils and agricultural practises that led to salinization, the transportation of dangerous goods, activities carried out by the Department of Defense as a regulator, coal-generated energy projects, and the shipping of fuel through Arctic Waters. These comments may reflect an expectation that FEARO would look specifically to provisions from relevant statutes and regulations within these subject areas for inclusion on the SRPR.

Finally, it was suggested that the Wild Animal and Plant Protection Act be included when and if it is enacted, as well as the tanker transportation of oil and gas under the Canada Shipping Act and the enabling legislation for the James Bay Agreement.